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May 9, 1995

Ms. Mary Nichols
Assistant Administrator, Office of Air and Radiation
United States Environmental Protection Agency
401 M Street, SW
Washington, D.C. 20460

Dear Ms. Nichols,

The California Air Pollution Control Officers Association (CAPCOA) has enjoyed a productive relationship with U.S. EPA headquarters resolving some critical issues for implementation of the Federal Operating Permits Program, under Title V. In particular, we have successfully addressed the thousands of truly insignificant sources that would have been captured by, and overwhelmed, the Title V program. Your willingness to listen to our concerns, and to direct staff to work with us, has lead to a practical solution that will benefit many programs both within and outside of California. We are writing to you today in hopes that similar progress can be made towards implementation of the Federal Air Toxics Program, under Title III.

California air districts have considerable experience in the area of air toxics regulation. Some local districts have been reviewing new and modified sources of air toxics for almost ten years. The State also has an effective program for identification of potentially significant existing sources of air toxics, and a requirement that significant health risks be mitigated. We have encountered and resolved some important issues over the past decade; we believe that our experience could and should be used to prevent the same problems from arising in the national program and we hope that, if appropriate actions are taken, many of the types of problems that have surrounded the Title V program can be avoided.

At the same time, as the rules and programs of Section 112 have evolved, we have discovered some alarming situations that could have a severe negative effect on our programs. We strongly believe that the Act was *not* intended to undermine existing, effective programs. We further wish to point out that if these programs are lost, through incompatibility with the federal program, air quality will suffer, and less protection from air toxics will be afforded the exposed public. CAPCOA therefore urges EPA to give careful consideration to our concerns, and to take quick, decisive action to address them.

CAPCOA does believe that important gains can be made under Section 112 towards controlling air toxics. We understand and support the need for a "level playing field" because it protects all sectors of the community we serve; industry sources should not be driven from economic centers by unequal regulation of air toxics; environmental interests should expect a "floor" level of control of hazardous pollutants; and the public deserves protection from exposure to air toxics that could significantly impact health. We encourage the development of programs that accomplish these goals. However, we don't support requirements that place severe demands on public resources *without* improving air quality. We also don't believe that a "level" playing field is the same as "identical" playing fields. Air quality and exposure to toxics is driven by different factors in different areas; in response, our policies and programs will have to differ. Flexibility must therefore go hand in hand with stringency if we are to be successful.

We have attached a summary of specific issues that we feel are critical to the success of Section 112. Many of these issues have also been raised in a recent letter to you from the California Air Resources Board. CAPCOA urges EPA to give them careful consideration. You will notice the overall theme reflects our need for clearer, simpler, more comprehensive approaches to equivalency. We respect your need to verify equivalency, but we believe there are (and we propose) some better mechanisms to accomplish this. Finally, we do not believe that flexibility has to come at the expense of the overall program. Areas that do not, or can not regulate air toxics without a federal mandate should be given that mandate, but where programs that meet the intent of Section 112 are already in place, they should remain intact.

Thank you for listening to our concerns. We hope to hear from you soon, and look forward to working with EPA to resolve these difficult issues. If you have any questions regarding our comments, please contact Brian Bateman of the Bay Area Air Quality Management District at (415) 749-4653; he is the Chairperson of the CAPCOA Title III Subcommittee.

Sincerely,

Robert Carr,
CAPCOA President

RC:BB:bl
attachment

cc: Ms. Felicia Marcus
Regional Administrator
U.S. Environmental Protection Agency, Region IX
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San Francisco, CA 94105

Mr. David P. Howekamp
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Mr. Peter Venturini
Chief, Stationary Source Division
California Air Resources Board
2020 L Street
P.O. Box 2815
Sacramento, CA 95812

Mr. William Becker
Executive Director
STAPPA and ALAPCO
44 North Capitol St. N.W.
Washington, D.C. 20001

This attachment details CAPCOA position on critical issues regarding implementation of Section 112. This is not an inclusive summary because many programs and standards have not yet been developed and we cannot comment on what we have not seen. However, based on overall trends we have identified certain issues that require immediate attention. Our concerns are focused on (1) mechanisms for flexibility, (2) treatment of non-major sources, (3) issues identified with "potential to emit", and (4) what constitutes a "level playing field".

1. Mechanisms for Flexibility

Under Section 112(l) of the Act, state and local agencies are allowed to develop and submit programs to implement and enforce emission standards and other requirements for air pollutants listed under Sections 112(b) and 112(r). Section 112(l) directs EPA to publish guidance "that would be useful to the States developing programs for submittal under this subsection," pursuant to which, EPA promulgated the requirements of 40 CFR Part 63, Subpart E. Regrettably, California has not found the guidance useful or even practicable. This is born out by the State's lengthy attempt to receive equivalency for a rule that is clearly more stringent than the federal rule for which it would substitute. The ineffectiveness of this process is at the heart of many of our concerns with the overall toxics program. Following, we describe the points where the process has broken down. We also suggest mechanisms to repair it, as well as other ways that EPA can provide flexibility without compromising the overall program. This is the most critical issue that we see regarding implementation of Section 112.

At the same time that EPA was developing control measures for Perchlorethylene Dry Cleaners, California was engaged in a similar process. The State made every effort to work with OAQPS staff to ensure that the two standards would be as similar as possible, to ease the equivalency process. EPA policies surrounding exparte communications severely hampered the State's ability to appropriately adjust its rule. *EPA has begun to address this, but more complete communication must be established during the rule revision period between proposal and promulgation.*

The California control requirements go beyond those in the EPA standard and the State has provided demonstrations of expected emissions reductions that EPA staff have agreed are more stringent. The equivalency process has broken down over administrative procedures for recordkeeping, reporting, and approval of alternative test methods. In the meantime, both standards are in effect in the State with dual requirements and separate implementing agencies. *EPA needs to establish separate approval processes under Subpart E for substantive emissions requirements as opposed to administrative and compliance procedures. The latter are a measure of the agency's ability to implement and enforce, not of the stringency of the rule; state and local agencies may have enforcement mechanisms at their disposal which EPA is unable to use. Such mechanisms may be more effective and must be approvable.*

California has traditionally been on the cutting edge of technology development. We encourage the use of alternative control technologies in our permitting programs, and some of our districts have considerable staff expertise in design and implementation of test methods for alternative control systems. In addition, because our emission standards are often more stringent, some federal test methods are not sufficiently accurate to determine compliance with our rules. The existing federal process for approval of alternative test methods is cumbersome and time consuming. *We believe EPA should establish a mechanism to allow local districts to approve alternative test methods, with EPA review after the fact, so that the permitting process is not delayed.*

Most local districts in California conduct frequent inspections of stationary sources. State emissions standards have traditionally not specified a minimum record retention period because inspection schedules vary; record retention is generally set through conditions in the source's operating permit. Most local permits ask for records to be retained for a period of two years because the sources will have been inspected within that time frame. It is an unnecessary burden on the sources to require they retain records for five years in California. *EPA should recognize the greater field presence of local districts by allowing record retention for six months past the last date of inspection. We believe that enforcement decisions can be made within a six month time frame.*

Similarly, California rules do not generally specify a minimum reporting schedule. Some districts inspect their major sources as frequently as quarterly, while many have staggered schedules that are driven by the potential for significant emissions violations (based on capacity, past history, and relative hazard of emissions). We believe that records inspected on-site do not need to be submitted to the district. *We recommend that EPA allow equivalency demonstrations to use inspections in lieu of reporting, and only require reporting between inspections if the inspection schedule is less frequent than the minimum reporting requirement.*

The Subpart E rule specifically requires six month reporting. Because of this, even when EPA has determined (in a specific MACT standard) that less frequent reporting is appropriate, an approvable state rule under Subpart E would have to require semi-annual reports. This not a measure of equivalency. *EPA should remove the independent semi-annual reporting requirement from Subpart E.*

In general, we have seen that overall, the process of preparing a submittal under Subpart E is tremendously resource intensive. We understand that, because the program is in its infancy, there are many unknowns and unexpected problems arise. At the same time, the process must allow for timely approval of rules. Current compliance schedules in MACT standards do not provide adequate time for approval of a state or local rule under Subpart E before the first federal requirements become effective. *EPA needs to lengthen the time between promulgation and the first compliance dates in the MACT standards, and improve*

the process for reviewing submittals under Subpart E. There will be many implementation questions that will arise as Title III and Title V get under way; we need quick, "presumptive" decisions to allow implementation to proceed smoothly. EPA can always review the decisions and revise policy based on the observed outcomes.

EPA is beginning to develop standards concurrently under Section 111 and 112, or by carrying out both mandates as development under one Section. We support EPA's efforts to streamline rule development. *We believe it is important that any control measures for HAPs that are proposed under Section 111 be handled under a process analogous to Subpart E, so that existing state and local controls for the same toxics be approvable if they are at least as stringent.*

The recommendations outlined above speak to specific issues; the overarching problem is a need for broad flexibility in delegation and equivalency determinations where state and local agencies have existing, effective programs. Some of California's most successful toxics control efforts have occurred because public disclosure requirements prompted voluntary reductions by industry. Our experience has lead us to craft new programs that allow the source itself to determine the most effective and efficient means of impact mitigation, based on its own unique situation. These kinds of programs have no federal equivalent, but may are "pollution prevention" efforts that EPA should support. The fact that EPA has no rule equivalent, no existing form to express the standard in, does not mean that equivalent reductions won't be achieved, on a total program basis. *CAPCOA believes that one of the most important steps EPA needs to take is to provide for broad delegation of authorities under Section 112. We suggest that environmental indicators, or other measures of toxics program success be established, and that broad program approval be granted with periodic evaluation with respect to these indicators and measures. In the interest of public health, cleaner air, and better government, we urge EPA to undertake this effort now, and we offer our support and assistance.*

2. Treatment of Non-Major Sources

Under the federal toxics program, EPA is departing from traditional criteria pollutant approaches by considering the impacts of small (area) sources. Our examination of the proposed and promulgated MACT standards suggests that certain regulatory concepts have been carried directly from the criteria program to the toxics program without careful consideration being given to practical implementation issues involving area sources. In California, we have been regulating these sources for many years. We have some specific concerns regarding the ways in which area sources will enter, be handled by, and pass through the federal toxics program, and the impact this may have on other programs. The underlying theme is a basic need to assess the level of effort and resources to be committed, and compare that to expected gains in air quality and public health. We do <u>not</u> suggest that these sources should go unregulated; we support regulation of significant area source impacts, but question the approaches taken.

The most immediate issue we face with area sources subject to Title III is the question of whether or not they should be subject to Title V permitting requirements. We believe that the traditional measures of federal enforceability are not appropriate for area source permits. They should not require the same level of compliance demonstration, public participation, or EPA review. Consider that a major metropolitan area like the San Francisco Bay Area has six thousand permitted facilities, of which only a few hundred have actual emissions above fifty percent of any major source threshold; if each of these permits required EPA and public review for every modification, the entire system would become gridlock. *We suggest that EPA allow state and local implementers to use state or local permits for area sources, if they choose. If some areas need a federal mandate to require permits, EPA can provide this without mandating the entire Title V process. Existing local permit programs should be approvable without significant modification.*

Also of great concern is the resource burden associated with compliance verification, both for the sources and for the implementing agencies. Small sources do not have expertise in environmental compliance, nor the resources to engage trained consultants. They require a substantial level of outreach and source-education by the permitting authority. In addition, because of the much higher turnover rate in some of these categories, initial outreach is not enough; there needs to be significant ongoing compliance assistance and training. At the same, the individual small source often does not present a significant threat to public health, but the category in aggregate may. It is unlikely that a federal enforcement effort would ever be brought to bear on an individual small violator, therefore a federally enforceable demonstration of continuous compliance may not serve a practical purpose. On the other hand, overall compliance for the category is an important goal. *We encourage EPA to explore compliance approaches that target broad category performance, rather than laying the groundwork for prosecutable enforcement cases. Outreach inspections and statistical benchmarks for compliance may, in the final analysis, provide greater gains for public health than detailed paper trails of evidence. The verified number of days of violation is less critical than the ultimate emissions reductions from the category.*

3. Issues of Potential to Emit

Through STAPPA and ALAPCO, CAPCOA reviewed and provided comments on EPA's draft guidelines on Potential to Emit (PTE). We feel strongly that we have existing, effective programs for controlling air toxics, and that some of the possible interpretations now being applied to PTE could seriously harm these programs. Through months of discussion of this issue, as it relates both to Title III and to Title V, we have come to the following conclusions: (a) where EPA is advocating stringent approaches to PTE, it is in order to ensure that sources do not circumvent applicable requirements; (b) where loose approaches to PTE are advocated, it is largely to provide flexibility to address truly insignificant sources; (c) both are important goals; and (d) policies surrounding PTE may not be the best forum for addressing all of them, and may, in fact, create greater problems

down the road. This is particularly apparent where questions of timing are concerned, and in deciding whether a source that is major at one time for one pollutant in one source category, is always to be deemed major, for all pollutants, in all source categories.

We recommend the use of real world assumptions for estimating PTE (for example; a small autobody shop will not operate 24 hours per day, 365 days per year). We believe that actual emissions are the best measure of significance of a source's emissions; if actual emissions at levels below 10 tons per year are significant, then EPA needs to set lesser-quantity thresholds. We strongly support the use of prohibitory rules based on actual emissions to lessen the permit burden and remove de minimis sources from the program. We feel that truly de minimis sources should be removable at any state in the program, that there should be no "drop-dead" date. Larger sources should likewise have no deadline - the Act does not say "potential to emit as of a certain date...." However, this should not prevent their control as "non-major" sources. In creating Sections 112(f) and 112(k), Congress acknowledged that there is nothing magic about 10 tons per year, that significant impacts could occur at lower levels of emissions. A strong residual risk program and urban area source program will ensure that significant sources are mitigated.

We have also observed that in certain cases while advocating very tight approaches to PTE and Federal Enforceability, EPA has subcategorized or negotiated MACT category standards that are inappropriately weak. This results in rules that are heavy on the red tape, but less substantial where real emissions reductions are concerned. In California, our programs tend to get better emissions reductions, but count fewer beans. If we are required to subject a majority of our sources to additional bureaucratic processes without realizing any additional toxics reductions, some of our programs could be seriously jeopardized. This was not the intent of Congress. In addition, we are concerned that some of the decisions made under the guise of PTE may deprive future toxics programs (such as residual risk, and the urban area source program) of the basis for their intended, and important, emissions reductions.

We strongly urge EPA to provide genuine flexibility under 112(l) so that states and locals with existing toxics programs can eliminate unnecessary burden where truly de minimis sources are concerned, and can determine appropriate levels of compliance demonstration for a given source category and size. PTE should not be used as a surrogate for Subpart E revisions. Problems with determinations of PTE should be addressed, but Subpart E must also be examined. We also urge EPA to give careful consideration to the possible impacts that PTE decisions will have on important future programs. California has successful toxics programs that look at both major and area sources, and that consider risk; we believe all of these components provide needed toxics reductions. We also believe that one shoe does not fit every foot. EPA should not compound the inflexibility of Subpart E by proposing a "one-size" PTE approach to these diverse problems.

4. The Level Playing Field

California has been aggressively regulating air toxics for about a decade. Many of our programs have relied heavily on risk-based approaches, and some of our technology-based rules have taken a substantially different form than their new federal equivalents. This can present real compliance problems for sources. We have responded to industry concerns, in part, by emphasizing the benefits of the "level playing field" for all of us. These benefits have not, unfortunately, be realized.

A level playing field should ensure that people are protected from exposure to toxics, regardless of whether the exposed individual is in the North East, the Midwest, the South, or the West Coast. We expected to continue our efforts in exposure mitigation, and to expand our control strategies where EPA approaches would give additional reductions. We also expected a level playing field would reduce the economic advantage to industries that operate in areas where air toxics have not traditionally be regulated.

We did not expect that in leveling the field, EPA would sweep aside our decade of policies, programs, and progress. We also did not expect that regional differences would result in stricter interpretations where existing programs have provided more data, and looser interpretations where lack of toxics control has resulted in little or no data. Rather than leveling the field, this penalizes the areas that have taken the lead in toxics control, and it reinforces status quo in areas where minimal attention has been paid to toxics in the past.

Sources in well-regulated areas are now caught between strong, but often opposing programs. This has heightened the economic advantage of operating in other areas, not removed it. If a solution is not created soon, the economic issue alone will force the repeal of many existing, effective programs.

CAPCOA strongly urges EPA to provide flexibility, to focus on achieving real reductions in toxics and toxic impacts, and to work to ensure that real reductions occur across the nation.